

CITY FORM OF AGREEMENT:

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into on _____, 2003, between the REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH, CALIFORNIA, a public body ("Agency"), and _____, a California corporation, with a place of business at _____ ("Consultant").

Recitals:

- A. The Agency requires specialized design services requiring professional skills to be performed in connection with its various redevelopment activities within the City of Long Beach ("Project").
- B. Agency has ascertained that Consultant and its employees are qualified, licensed, if so required, and experienced in performing such services.
- C. Agency desires to have Consultant perform these services.

THE PARTIES AGREE as follows:

1. SCOPE OF WORK OR SERVICES.

- A. Consultant shall furnish specialized services more particularly set forth in Exhibit "A" attached to this Agreement in accordance with the standards of the profession, and Agency shall pay for these services from time to time, in due course of

payments, as set forth in Exhibit "B" attached to this Agreement; however, such payments shall not exceed _____ during the term of this Agreement. Any changes to Exhibit "A" and Exhibit "B" must be approved in writing by the Agency's Executive Director.

B. Consultant may select the time and place of performance under this Agreement provided, however, that access to Agency documents, records, and the like, if needed by Consultant, shall be available only during Agency's normal business hours.

C. Agency shall pay Consultant in due course of payments following receipt from Consultant and approval by Agency's Executive Director of invoices showing the services performed and the name of the Project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle.

2. TERM. The term of this Agreement shall commence at 12:01 a.m. on _____ 2003, and shall terminate at midnight on _____, unless sooner terminated as provided in this Agreement, or unless the services to be performed under this Agreement or the Project is completed sooner.

3. COORDINATION AND ORGANIZATION.

Consultant shall coordinate performance under this Agreement with Agency's representative and shall advise and inform Agency's representative of the work in progress on the Project in sufficient detail so as to assist Agency's representative in making presentations and in holding meetings for the exchange of information. For the purposes of this Agreement, Consultant's key employee is _____. Any change to the designated key employee must receive Agency's prior written permission. For purposes of this Agreement, the Agency's key employee is _____.

4. INDEPENDENT CONTRACTOR. In performing services under this Agreement, Consultant is and shall act as an independent contractor and not an employee, representative, or agent of Agency. Consultant shall have control of Consultant's work and the manner in which it is performed. Consultant shall be free to contract for similar services to be performed for others during this Agreement provided, however, that Consultant acts in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges and agrees that a) Agency will not withhold taxes of any kind from Consultant's compensation, b) Agency will not secure workers' compensation or pay unemployment insurance to, for or on Consultant's behalf, and c) Agency will not provide and Consultant is not entitled to any of the usual and customary rights, benefits or privileges of Agency employees. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents shall represent themselves to be employees or agents of Agency.

5. INSURANCE. Consultant shall procure and maintain at Consultant's expense for the duration of this Agreement from an insurance company that is admitted

to write insurance in California or that has a rating of or equivalent to A:VIII by A.M. Best & Company the following insurance:

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(a) Comprehensive general liability insurance or self-insurance naming the Agency, the City of Long Beach, its officials, employees, and agents as additional insureds from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out of or in any manner connected with Consultant's operations or performance under this Agreement in an amount not less than One Million Dollars (\$1,000,000) combined single limit for each occurrence or Two Million Dollars (\$2,000,000) general aggregate.

(b) Workers' Compensation insurance as required by the Labor Code of the State of California.

Any self-insurance program or self-insured retention must be separately approved in writing by Agency and shall protect Agency, the City of Long Beach, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) days' prior written notice to Agency, and shall be primary and not contributing to any other insurance or self-insurance maintained by Agency.

Consultant shall deliver to Agency certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of

performance under this Agreement. The certificate and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims made" policies of insurance are not acceptable unless the City Risk Manager determines that "occurrence" policies are not available in the market for the risk being insured. If a "claims made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days. Such insurance as required by this Agreement shall not be deemed to limit Consultant's liability relating to performance under this Agreement. Agency reserves the right to require complete certified copies of all these policies at any time. Any modification or waiver of the insurance requirements in this Agreement shall only be made with the approval of the City Risk Manager.

6. ASSIGNMENT AND SUBCONTRACTING. This Agreement contemplates the personal services of Consultant and Consultant's employees, and the parties acknowledge that a substantial inducement to Agency for entering into this Agreement was and is the professional reputation and competence of Consultant and Consultant's employees. Consultant shall not assign its rights or delegate its duties under this Agreement, or any interest in this Agreement, or any portion it, without the prior approval of Agency, except that Consultant may with the prior approval of the Agency's Executive Director, assign any moneys due or to become due the Consultant under this Agreement. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation. Nothing stated in this Section 6 shall prevent Consultant from

employing as many employees as Consultant deems necessary for performance of this Agreement.

7. CONFLICT OF INTEREST. Consultant, by executing this Agreement, certifies and shall obtain similar certifications from Consultant's employees and approved subcontractors that, at the time Consultant executes this Agreement and for its duration, Consultant does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of Agency and the interests of such other client.

8. MATERIALS. Consultant shall furnish all labor and supervision, supplies, material, tools, machinery, equipment, appliances, transportation, and services necessary to or used in the performance of Consultant's obligations under this Agreement.

9. OWNERSHIP OF DATA. All materials, information and data prepared, developed, or assembled by Consultant or furnished to Consultant in connection with this Agreement, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material, and memorandum ("Data") shall be the exclusive property of Agency. Data shall be given to Agency, and Agency shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to Consultant. Copies of Data may be retained by Consultant but Consultant warrants that Data shall not be made available to any person or entity for use

without the prior approval of Agency. This warranty shall survive termination of this Agreement for five (5) years. Consultant's obligation with regard to the provision of Data to Agency shall not apply to Data (a) prepared by design professionals other than Consultant, or (b) use of a program such as Word or other word-processing or graphic program purchased or leased by Consultant under license from another source. Agency shall obtain its own computer programs if required to use the Data to read or reproduce Data provided by Consultant or its subcontractors. Any reuse or modification by Agency of any such documents for purposes other than this Agreement without Consultant's prior approval shall be at the Agency's sole risk and liability.

10. TERMINATION. Each party shall have the right to terminate this Agreement for any reason or no reason at any time by giving fifteen (15) calendar days' prior notice to the other party. In the event of termination under this Section, Agency shall pay Consultant for services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. The procedures for payment in Section 1.C. with regard to invoices shall apply. On the effective date of termination, Consultant shall deliver to Agency all Data developed or accumulated in the performance of this Agreement, whether in draft or final form, or in process.

11. CONFIDENTIALITY. Consultant shall keep the Data confidential and shall not disclose the Data or use the Data directly or indirectly other than in the course of services provided hereunder during the term of this Agreement and for five (5) years following expiration or termination of this Agreement without the consent of Agency. In

addition, Consultant shall keep confidential all information, whether written, oral, or visual, obtained by any means whatsoever in the course of Consultant's performance hereunder for the same period of time. Consultant shall not disclose any or all of the Data to any third party, nor use it for Consultant's own benefit or the benefit of others except for the purpose of this Agreement.

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12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a breach of confidentiality with respect to Data that:

- (a) Consultant demonstrates Consultant knew prior to the time Agency disclosed it; or
- (b) Is or becomes publicly available without breach of this Agreement by Consultant; or
- (c) A third party who has a right to disclose does so to Consultant without restrictions on further disclosure; or
- (d) Must be disclosed pursuant to subpoena or court order.

13. AMENDMENT. This Agreement, including all exhibits, shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this Agreement.

14. GOVERNING LAW. This Agreement shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws).

15. ENTIRE AGREEMENT. This Agreement, including all exhibits,

constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

16. INDEMNITY. Consultant shall protect, defend, indemnify and hold Agency, the City of Long Beach, its officials, employees, and agents (collectively in this Section referred to as "Agency") harmless from and against any and all claims, demands, causes of action, losses, damages, and liabilities, whether or not reduced to judgment, which may be asserted against Agency arising from or attributable to or caused directly or indirectly by Consultant, Consultant's employees, or agents in the performance of work under this Agreement, or any negligent or intentional act, omission or misrepresentation by Consultant, Consultant's employees or agents, which act, omission or misrepresentation is connected in any way with performance of work under this Agreement. If it is necessary for purposes of resisting, adjusting, compromising, settling, or defending any claim, demand, cause of action, loss, damage, or liability, or of enforcing this provision, for Agency to incur or to pay any expense or cost, including attorney's fees or court costs, Consultant agrees to and shall reimburse Agency within a reasonable time. Consultant shall give Agency notice of any claim, demand, cause of action, loss, damage or liability within ten (10) calendar days.

Agency shall protect, defend, indemnify and hold Consultant, its employees, directors, agents, representatives, and attorneys (collectively in this section referred to as "Consultant") harmless from and against any and all claims, demands, causes of action, losses, damages, and liabilities, whether or not reduced to judgment, which may be asserted against Consultant arising from or attributable to or caused

directly or indirectly by Agency, Agency's employees, officials, or agents in the performance of work under this Agreement, or any negligent or intentional act, omission or misrepresentation by Agency, Agency's employees, officials, or agents, which act, omission or misrepresentation is connected in any way with performance of work under this Agreement. If it is necessary for purposes of resisting, adjusting, compromising, settling, or defending any claim, demand, cause of action, loss, damage, or liability, or of enforcing this provision, for Consultant to incur or to pay any expenses or cost, including, but not limited to attorney's fees or court costs, Agency agrees to and shall reimburse Consultant within a reasonable time. Agency shall give Consultant notice of any claim, demand, cause of action, loss, damage or liability within ten (10) calendar days.

17. AMBIGUITY. In the event of any conflict or ambiguity between this Agreement and any exhibit, the provisions of this Agreement shall govern.

18. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.

19. NONDISCRIMINATION. In connection with performance of this Agreement and subject to applicable rules and regulations, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, AIDS, AIDS-related condition, handicap, disability, or Vietnam Era veteran status. Consultant shall ensure that applicants are employed, and that employees are treated during their employment,

without regard to these bases. Such actions shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

It is the policy of Agency to encourage the participation of Disadvantaged, Minority and Women-owned Business Enterprises in Agency's procurement process, and Consultant agrees to use its best efforts to carry out this policy in the award of all approved subcontracts to the fullest extent consistent with the efficient performance of this Agreement. Consultant may rely on written representations by subcontractors regarding their status.

Compliance with the Americans with Disabilities Act of 1990 shall be the sole responsibility of Consultant, and Consultant shall defend and hold the Agency harmless from any expense or liability arising from Consultant's non-compliance therewith.

20. REPORTING. Each June and December, or in the case of short-term contracts, prior to application for final payment, Consultant agrees to submit information relating to Consultant's and Consultant's subcontractors' status as to Minority-Owned Business Enterprises ("MBE"), Women-Owned Business Enterprises ("WBE") and Disadvantaged Business Enterprises ("DBE"), as defined in Section 8 of the Small Business Act (15 U.S.C. § 637).

21. NOTICES. Any notice or approval required under this Agreement by either party shall be in writing and personally delivered or deposited in the U.S. Postal

Service, first class, postage prepaid, addressed to Consultant at the address first stated above, and to the Agency at 333 West Ocean Boulevard, 3rd Floor, Long Beach, California 90802. Notice of change of address shall be given in the same manner as stated in this Agreement for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal service is obtained, whichever first occurs.

22. COPYRIGHTS AND PATENT RIGHTS.

A. Consultant shall place the following copyright protection on all Data: © Redevelopment Agency of the City of Long Beach, California 2003.

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B. Agency reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from Consultant's performance of this Agreement.

C. Consultant warrants that to the best of its knowledge and belief the Data does not violate or infringe any patent, copyright, trade secret or other proprietary right of any other party. Consultant agrees to and shall protect, defend, indemnify and hold Agency, the City of Long Beach, its officials and employees harmless from any and all claims, demands, damages, loss, liability, causes of action, costs or expenses (including reasonable attorneys' fees) whether or not reduced to judgment, arising from any breach or alleged breach of this warranty. Consultant's warranty and agreement to indemnify Agency with regard to the violation or infringement of any patent, copyright, trade secret or other proprietary right regarding the use of Data shall not apply to Data (a) prepared by design professionals other than Consultant, or (b) use of a

program such as Word or other word-processing or graphic program purchased or leased by Consultant under license from another source. Agency shall obtain its own computer programs if required to use the Data to read or reproduce Data provided by Consultant or its subcontractors.

23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants that Consultant has not employed or retained any entity or person to solicit or obtain this Agreement and that Consultant has not paid or agreed to pay any entity or person any fee, commission, or other monies based on or from the award of this Agreement. If Consultant breaches this warranty, Agency shall have the right to terminate this Agreement immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of such fee, commission, or other monies.

24. WAIVER. The acceptance of any services or the payment of any money by Agency shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

25. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 17, 19, 23, and 29 prior to termination or expiration of this Agreement, and shall not extinguish any warranties hereunder.

26. TAX REPORTING. As required by federal and state law, Agency is

obligated to and will report the payment of compensation to Consultant on Form 1099-Misc. Consultant shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. Consultant's Employer Identification Number is_____. Consultant acknowledges and agrees that Agency has no obligation to pay Consultant under this Agreement until Consultant provides the above-mentioned number.

27. ADVERTISING. Consultant shall not use the name of Agency, the City of Long Beach, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the Agency's Executive Director or designee.

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28. AUDIT. Agency shall have the right at all reasonable times during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of Consultant relating to the projects performed by Consultant pursuant to this Agreement.

29. NO PECULIAR RISK. Consultant acknowledges and agrees that the services to be performed under this Agreement do not constitute a peculiar risk of bodily harm and that no special precautions are required to perform the services.

30. THIRD PARTY BENEFICIARY. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or

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entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

THE PARTIES have executed this Agreement as of the date first provided above.

REDEVELOPMENT AGENCY OF THE
CITY OF LONG BEACH, CALIFORNIA

_____, 2003

By _____
Executive Director/Secretary

AGENCY

_____, a California
corporation

_____, 2003

By
Title

_____, 2003

By
Title

CONSULTANT

Approved as to form this _____ day of _____, 2003.

ROBERT E. SHANNON, City Attorney
of the City of Long Beach
Attorney for the Redevelopment
Agency of the City of Long
Beach, California

By
Assistant

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